

H523ZARC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 867 (RMB)

5 REZA ZARRAB and MEHMET HAKAN
6 ATILLA,

7 Defendants.

New York, N.Y.

May 2, 2017

2:00 p.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13 APPEARANCES

14 JOON H. KIM

15 Acting United States Attorney for the
16 Southern District of New York

MICHAEL LOCKARD
17 SIDHARDHA KAMARAJU

Assistant United States Attorneys

18 BRAFMAN & ASSOCIATES P.C.

Attorneys for Defendant Zarrab

19 BENJAMIN BRAFMAN
20 MARC AGNIFILO

-and-

DOAR RIECK DeVITA KALEY & MACK

21 Attorneys for Defendant Zarrab

JAMES R. DeVITA

22 -and-

FERRARI & ASSOCIATES, P.C.

23 Attorneys for Defendant Zarrab

24 ERICH C. FERRARI

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Appearances (Continued)

HERRICK, FEINSTEIN, LLP
Attorneys for Defendant Atilla
VICTOR J. ROCCO
THOMAS E. THORNHILL

ALSO PRESENT: A.J. Elterman and Asiye Kay, Turkish language
interpreters

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1
2 THE COURT: So, let me start as I usually do in these
3 proceedings by mentioning the -- did you want to say something?

4 MR. BRAFMAN: I wanted to add something for the record
5 that I don't think your Honor has. I received information
6 either late last night or very early this morning that in
7 addition to the materials Mr. Mukasey previously provided that
8 are under seal, we wanted the Court to know that he may be
9 doing some work for one of banks in question, although up until
10 this point he has not, and it would have nothing to do with
11 this case and something to do with a civil piece of litigation.

12 THE COURT: Okay. Thanks. That will come up again,
13 so you will remind me when it does.

14 MR. BRAFMAN: Okay.

15 THE COURT: I wanted to make mention of the
16 presumption of innocence as I usually do, and that is to point
17 out that under our system, the guilt or innocence -- first I
18 should start by asking Mr. Zarrab and Mr. Atilla if they're
19 able to understand these proceedings with the help of the
20 interpreter.

21 DEFENDANT ATILLA: Yes.

22 THE COURT: Mr. Zarrab, yes?

23 DEFENDANT ZARRAB: Yes, your Honor.

24 THE COURT: Then returning to the presumption of
25 innocence. I want to point out that the guilt or innocence of

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1 Mr. Zarrab and Mr. Atilla is not the subject of today's
2 proceeding. Under our system, both defendants, all defendants
3 are presumed to be innocent, unless and until they are proven
4 guilty by a jury or an appropriate admission.

5 So today's hearing is the second Curcio proceeding or
6 Curcio hearing to be held in this case. The first such hearing
7 involved the representation of defendant Zarrab by the law firm
8 of Kirkland & Ellis, and particularly attorneys Paul Clement
9 and Viet Dinh, and perhaps one or two other individuals from
10 Kirkland & Ellis.

11 In general terms, the first Curcio hearing was
12 principally occasioned by Kirkland & Ellis's representation of
13 eight banks which are also referred to as victim banks in this
14 criminal case.

15 The background and the parameters of this second
16 Curcio hearing are set forth in the Court's decision and order
17 dated April 5, 2017. And in preparation for today's hearing, I
18 have reviewed submissions from the defense dated March 27,
19 2017, dated March 30, 2017, dated March 31, 2017, also
20 April 19, 2017. The April 19 submission included affidavits
21 from Messrs. Benjamin Brafman, Rudolph Giuliani, Laurence Levy,
22 Robert Mangas, and Michael Mukasey.

23 MR. BRAFMAN: Excuse me, your Honor. Just for the
24 record, I think it was dated April 14.

25 THE COURT: Okay. I'll stand corrected.

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1 MR. BRAFMAN: I don't want the record to be looking
2 for a April 19 submission.

3 THE COURT: I appreciate that. Thank you.

4 There are also attachments to that submission, such as
5 registration statements filed pursuant to the Foreign Agents
6 Registration Act. Then there was a further submission from the
7 defense dated April 27, 2017, which included updated
8 registration statements.

9 I take it there's no additional registration statement
10 filed yet. There would be one due probably April 29, 2017,
11 retroactive six months, but I don't think it's been filed yet.

12 MR. BRAFMAN: I have not received any.

13 THE COURT: Okay. There are also submissions from the
14 government dated March 27, 2017, March 31, 2017, and April 18,
15 2017.

16 And in addition, I've reviewed the joint Curcio
17 questions prepared by and submitted by the government and the
18 defense under cover of the letter dated April 28, 2017.

19 Additionally, the Court has appointed as CJA counsel
20 James DeVita as an independent Curcio counsel for Mr. Zarab
21 with regard to what the Court has sometimes referred to as the
22 Giuliani/Mukasey alleged conflict issues.

23 Mr. DeVita advised the Court that he previously worked
24 under Mr. Giuliani over 20 years ago when Mr. Giuliani was the
25 United States attorney for the Southern District of New York.

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1 Mr. DeVita also advised that that prior relationship would not
2 impact his ability to be fair and independent in this matter.
3 Fair to Mr. Zarrah.

4 I don't believe, Mr. DeVita, that you have made any
5 written submissions; is that correct?

6 MR. DeVITA: No, I have not, your Honor. I've
7 conferred with Mr. Zarrah on two occasions and spent a
8 significant amount of time with him with a Turkish interpreter,
9 in order to familiarize myself with him and to familiarize him
10 and make sure he's comfortable with understanding the issues
11 before your Honor.

12 THE COURT: Great. I'm going to call upon you again
13 later on in these proceedings in that regard.

14 MR. DeVITA: Yes, your Honor.

15 THE COURT: Also, yesterday, May 1, I issued an order
16 indicating some additional topics that I wanted to address.
17 Well, it's up to you all whether you want to make a subsequent
18 written submission in response to those questions or if you
19 want to do them orally today. Any preference?

20 MR. BRAFMAN: My preference would be to do it orally
21 today if we can.

22 MR. KAMARAJU: That's fine for the government.

23 THE COURT: Let's start with those questions. The
24 first of which asks whether Messrs. Giuliani and Mukasey and/or
25 their firms or any other defense counsel in this case have also

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1 been retained by Iran, Halk Bank, Turkey, apart from what has
2 already been submitted in this case, or the United States.

3 So let's do one at a time. Mr. Brafman, if yes,
4 explain.

5 MR. BRAFMAN: I'm advised by Messrs. Mukasey and
6 Giuliani that they do not and have not ever been retained by
7 Iran, and do not represent Iran.

8 THE COURT: Same is true for Halk Bank?

9 MR. BRAFMAN: That's correct.

10 THE COURT: And their firms as well?

11 MR. BRAFMAN: That's correct, your Honor.

12 THE COURT: And what about the United States?

13 MR. BRAFMAN: I think they have pending matters with
14 the United States because they do a great deal of pro bono work
15 and some CJA work. But nothing at all related to this case,
16 They have assured me of that.

17 THE COURT: In those matters, though, do they work for
18 the government or on the other side?

19 MR. BRAFMAN: Sometimes for the government, your
20 Honor. As I am advised by Mr. Mukasey, they don't have any
21 present or current litigations or past litigations that would
22 in any way impact this case in any manner. They have at times
23 represented agencies of the federal government, but none that
24 would even remotely relate to this case.

25 THE COURT: Okay. Do you want to be heard?

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MR. KAMARAJU: We would defer to Mr. Zarrah on that.

THE COURT: Okay. Second question is with respect to one of the Curcio questions and it's -- they all are, but it is an important question, so, I wasn't sure if there was a typo there. I didn't understand. The question reads I believe "Do you understand that your attorneys from Greenberg Traurig and Debevoise & Plimpton may be limited in making arguments to" and then the "to" is what I didn't understand to whom "about your level of involvement in the offense," which would be the crimes in this case, "role in the offense," or offenses, the crimes in this case, "and culpability."

Did I misread that?

MR. BRAFMAN: Can I ask what question your Honor is specifically --

THE COURT: It's 16E, it's on page three of the joint submission. I think there must have been something missing in there, but maybe I misread it.

MR. BRAFMAN: May I confer with the government for a moment?

THE COURT: Yes.

(Pause)

MR. BRAFMAN: I understand, your Honor, I don't think that in any way impacts on these proceedings. I think the government and I both understand that to the extent that they were to be involved in the plea negotiations, it might impact

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1 on what they may or may not do, but they are not involved in
2 plea negotiations. If they were, I would tell you.

3 THE COURT: But is the question read correctly? Am I
4 just misreading it. It says making argument to whom?

5 MR. KAMARAJU: Yes, your Honor. I think what we had
6 intended with that question is that Mr. Giuliani and
7 Mr. Mukasey would be limited in making arguments, for example,
8 to the government with respect to plea negotiations as to
9 Mr. Zarrah's level of involvement, role in the offense, and
10 culpability.

11 THE COURT: So, if we replaced "whom" with
12 "government," would that --

13 MR. BRAFMAN: I think it would be better for this case
14 if you replaced it with the United States Attorney for the
15 Southern District of New York.

16 THE COURT: Oh. Okay. Is that okay with you?

17 MR. KAMARAJU: Well, given the posture, to the extent
18 there are discussions with anybody other than the Southern
19 District of New York, we think they would be limited in those
20 conversations similarly.

21 MR. BRAFMAN: I don't have a problem with that, Judge.

22 THE COURT: Okay. So, the third question asks whether
23 Greenberg Traurig's representation of both Mr. Zarrah and the
24 Republic of Turkey is an actual conflict, contrasted with a
25 potential conflict. If so, whether it's actual or potential,

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1 is it waivable.

2 Here, I would like some authorities and rules in
3 particular that you are relying on, Mr. Brafman. Are you
4 prepared to address --

5 MR. BRAFMAN: Your Honor, I'm prepared to address it
6 orally. I believe it's a potential conflict at best, and
7 Mr. Zarrab has had that explained to him by myself, by
8 Mr. Agnifilo, by Mr. Ferrari who is present as well, and also I
9 believe by independent counsel, and he is prepared to waive any
10 actual or potential conflict.

11 MR. KAMARAJU: Yes, your Honor. From the government's
12 perspective, we simply don't have enough information at this
13 point to determine whether it would be an actual conflict. It
14 the may crystalize at some point that the representation or the
15 interests of the Republic of Turkey diverge so significantly
16 from Mr. Zarrab's.

17 MR. BRAFMAN: Can I have a suggestion on that, sir?

18 THE COURT: Sure.

19 MR. BRAFMAN: Since we've briefed this issue very
20 thoroughly in the prior Curcio hearing, and I represent to you
21 that now there is no actual potential conflict, and that if
22 there ever was, Mr. Zarrab would waive it, we would then notify
23 the government if we ever got to that position, we could then
24 revisit the issue if necessary.

25 But for the purposes of today's proceeding, I

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1 represent to you that I do not see a potential or an actual
2 conflict, and that Mr. Zarrab is prepared to waive it under any
3 circumstances.

4 THE COURT: Okay. That's satisfactory to me.

5 The next question is who is Greenberg Traurig's client
6 when Mr. Giuliani meets with Turkish and/or United States
7 officials to discuss Mr. Zarrab's case? Is it Turkey or is it
8 Mr. Zarrab?

9 MR. BRAFMAN: I think to the extent that some of these
10 matters are addressed under seal, I can represent to you in
11 open court that it is Mr. Zarrab who is their client at those
12 times.

13 THE COURT: Are those discussions privileged or can
14 they ever be or is the privilege waived in those circumstances?

15 MR. BRAFMAN: I think --

16 THE COURT: The reason I ask that is because there
17 would be Turkey as a third party, so to speak, and Mr. Zarrab's
18 counsel, and what I'm thinking about are prior conversations
19 between Mr. Zarrab, obviously, and Mr. Giuliani.

20 MR. BRAFMAN: I think any conversations between
21 Mr. Zarrab and either Mr. Mukasey or Giuliani or to
22 Mr. Giuliani's partner, Mr. Levy, would of course be
23 privileged.

24 To the extent that in their conversations with third
25 parties they raise something of a privileged nature, I'm not

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1 present at those conversations. And obviously, if those people
2 are not their clients, it would be hard to argue that they are
3 privileged. But the conversations between Mr. Zarrab and
4 Mr. Mukasey and Mr. Giuliani's partners are in fact privileged.

5 THE COURT: Okay.

6 MR. KAMARAJU: Yes, your Honor, we think you're
7 exactly right. To the extent there are conversations with
8 Turkish officials or U.S. government officials, those cannot be
9 privileged under any view of the law, because they are with
10 parties outside the privileged relationship.

11 THE COURT: So, we don't have to deal with it now, but
12 going back to the question number three, that is one of the
13 things that I was wondering as to whether this would be an
14 actual conflict or a potential conflict. It would strike me an
15 argument could be made that waiver of attorney-client privilege
16 might present a serious problem. But, you can just think about
17 that and get back to me.

18 The next question is may Messrs. Giuliani or Mukasey
19 participate or take positions adverse to Mr. Zarrab in
20 negotiations between the United States and Turkey?

21 MR. KAMARAJU: Certainly the government believes that
22 they cannot do that. They have ethical obligations that would
23 preclude them from negotiating to Mr. Zarrab's detriment,
24 whether with the United States or with Turkey.

25 THE COURT: Mr. Brafman, do you agree with that?

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1 MR. BRAFMAN: Your Honor, far be it for me to teach
2 either former Chief Judge Mukasey or former United States
3 Attorney Rudy Giuliani what their ethical obligations are.

4 THE COURT: I have an answer that starts that way
5 also.

6 MR. BRAFMAN: Your answer might be more important than
7 my answer.

8 But, Judge, I don't think there would be any point to
9 this undertaking if their discussions were not, hopefully, in
10 my view, to try and benefit Mr. Zarrab.

11 I don't believe that Mr. Mukasey has any issue
12 whatsoever, because neither he nor his firm are an agent of
13 Turkey nor do they represent Turkey. And I believe that
14 Mr. Giuliani is not himself a person who has ever represented
15 Turkey. And to my knowledge, he's the one who is conducting
16 whatever negotiations have taken place. So I don't see the
17 conflict arising.

18 THE COURT: Then the last question from yesterday's
19 order, do office holders and/or members or affiliates of the
20 governments of the United States or Turkey do business with
21 Mr. Zarrab and/or any of Mr. Zarrab's affiliates? If the
22 answer is yes, could you explain.

23 MR. BRAFMAN: I think the answer might be yes and yet
24 might be privileged, given the dynamics of this case in its
25 present posture and some of the charges.

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1 THE COURT: I see.

2 MR. BRAFMAN: But they certainly do not impact on what
3 Mr. Giuliani's firm does or does not do on behalf of Turkey.

4 THE COURT: Okay. So let me take those answers under
5 advisement and proceed with the Curcio proceeding in this way.

6 The conflicts that the government has urged the Court
7 to explore in this Curcio proceeding relate to the work of
8 counsel, of Messrs. Giuliani and Mukasey and their law firms,
9 namely Greenberg Traurig in the case of Mr. Giuliani and
10 Debevoise & Plimpton in the case of Mr. Mukasey. Work they've
11 done for certain banks that we've become familiar with in this
12 case which include Deutsche Bank, Bank of America, JPMorgan
13 Chase, Citibank, HSBC, Standard Chartered, UBS, and Wells
14 Fargo, whose interests are or may be adverse to the interests
15 of Mr. Zarrah.

16 Mr. Giuliani submitted an affidavit dated April 14,
17 2017, in which he states, among other things, "that of the
18 eight banks, I have not performed work for any of them in
19 2017." Mr. Mukasey submitted an affidavit dated April 13,
20 2017, which said, among other things, "of the eight bank, I
21 have performed work for only one, JPMorgan Chase, and that work
22 ceased more than two years ago."

23 The government also requests the Court to explore at
24 this Curcio hearing Greenberg Traurig's status of agent of the
25 Republic of Turkey. In his March 30, 2017 letter, Mr. Brafman

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1 advised the Court that Messrs. Giuliani and Mukasey have been
2 retained by Mr. Zarrab as his counsel, and that the engagement
3 of Messrs. Giuliani and Mukasey relates to this prosecution.
4 The work they are doing for Mr. Zarrab, Mr. Brafman advised, is
5 ancillary to the pretrial and future trial proceedings
6 occurring in this court. And, according to defense counsel,
7 they have no role in appearing in this court, or otherwise
8 participating in the trial.

9 Mr. Brafman also advised the Court in his March 30,
10 2017 submission, that the work being undertaken by Messrs.
11 Giuliani and Mukasey for Mr. Zarrab "may impact the
12 prosecution." He also added that Messrs. Giuliani and
13 Mukasey's representation as of that date, which is March 30,
14 2017, has not impacted the prosecution -- not at that time
15 impacted the prosecution, and whether it will is a matter of
16 speculation.

17 Is there any update in that regard, Mr. Brafman?

18 MR. BRAFMAN: No, sir.

19 THE COURT: In its March 27, 2017 letter, the
20 government wrote that "preparation for trial and participation
21 at trial are not the only stages of representation that
22 implicate the defendant's right to conflict-free counsel. In
23 this case," this is the government, "the government has been
24 expressly advised that Mr. Giuliani and Mr. Mukasey have been
25 retained by the defendant, Mr. Zarrab, and are involved in, and

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1 will continue to be involved in, efforts to explore a potential
2 disposition of the criminal charges in this matter. To the
3 extent" -- this is still the government's commenting -- "to the
4 extent that the defendant relies on advice and efforts of these
5 attorneys, and to the extent that there exist potential
6 conflicts of interest that could impair defendant Zarrab's
7 right to conflict-free representation, Curcio proceedings are
8 appropriate."

9 I agree with that conclusion that they are
10 appropriate, and that's what brings us in part here today. I
11 refer again to the April 5, 2017 decision and order on that
12 subject.

13 The defense letter response to that was that -- this
14 is a quote from Mr. Brafman -- "Unlike the attorneys associated
15 with Kirkland & Ellis, no lawyers from Greenberg Traurig or
16 Debevoise & Plimpton will have any involvement in the trial
17 preparation or trial in this case, and neither Mr. Giuliani nor
18 Mr. Mukasey intends to file a notice of appearance. Their
19 roles will not require any appearance in court."

20 As I mentioned in the order, as I stated in the order
21 dated April 5, 2017, I believe that the Court has an important
22 role in these Curcio proceedings. Its responsibilities are to
23 ensure that Mr. Zarrab is treated fairly, that he has
24 conflict-free counsel, and that he receives a fair trial on the
25 merits of the case. The trial court's primary obligation is to

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1 ensure that the defendant receives a fair trial.

2 The Court also takes into consideration the importance
3 of maintaining the integrity of these proceedings as the case
4 progresses toward trial, in view of, among other things, the
5 conflicts allegedly posed by Messrs. Giuliani and Mukasey and
6 their respective firms representing Mr. Zarrab and victim
7 banks, as well as in the case of Greenberg Traurig,
8 Mr. Giuliani's firm's role as agent for the Republic of Turkey.

9 The Supreme Court has held that federal courts have an
10 independent interest in ensuring that criminal trials are
11 conducted within the ethical standards of the profession and
12 that legal proceedings appear fair to all who observe them.
13 And the Second Circuit has held that in determining whether the
14 right of the accused to counsel of his choosing should be
15 honored in a particular case, we must balance the defendant's
16 Constitutional right against the need to preserve the highest
17 ethical standards of professional responsibility.

18 I would, before I turn to the question-and-answer
19 period of Curcio proceedings, which is the heart of the
20 proceeding, and first I will likely turn to Mr. DeVita, I would
21 like to make this mention of the affidavits submitted by
22 Mr. Giuliani and Mr. Mukasey.

23 And the rationale behind my comments are, first, that
24 I tried to be thorough throughout this case, particularly in
25 collecting and developing the background material necessary to

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1 assess the conflicts issues, which as I noted were first raised
2 by the government, and which absolutely are required to be
3 resolved.

4 Second is this point: This stems from the fact that
5 the affidavits submitted by Messrs. Giuliani and Mukasey make
6 no mention of Iran in their efforts and their work. And I do
7 wish to point out, I think it's important, that the record is
8 crystal clear that Iran, and particularly the defendant's
9 efforts, allegedly, unlawfully to benefit Iran, are the focus
10 of the indictment in this case.

11 The indictment contains serious allegations of (1) a
12 conspiracy to defraud the United States; (2) conspiracy to
13 violate the International Emergency Powers Act, and
14 particularly economic sanctions against Iran; (3) a conspiracy
15 to commit bank fraud; and (4) conspiracy to commit money
16 laundering.

17 All of these conspiracies were, according to the
18 indictment, carried out over a four-to-five-year period.
19 Mr. Atilla is alleged to have participated in two of those
20 conspiracies, and Mr. Zarrab is alleged to have participated in
21 four of them.

22 These four conspiracies were, according to the
23 indictment, all entered into and carried out, as I mentioned,
24 with the unlawful purpose of benefiting Iran. And most
25 respectfully, the Giuliani and Mukasey affidavits appear

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1 surprisingly disingenuous in failing to mention the central
2 role of Iran in the indictment, and indeed, failing to mention
3 Iran at all in their affidavits. And also in characterizing,
4 presumably attempting to be dismissive of, the transactions set
5 forth in the indictment as involving "consumer goods." The
6 affiants know very well that if the allegations in the
7 indictment are found or established by a jury, the defendants
8 will be shown to have committed serious felonies.

9 So at this point, I think I'll turn to Mr. DeVita
10 before I swear in Mr. Zarrab and ask if you could just advise
11 us of what has transpired, what your efforts have entailed.

12 MR. DeVITA: Yes, your Honor. I met twice with
13 Mr. Zarrab at the Metropolitan Correctional Center and for
14 several -- a couple hours each occasion with the assistance of
15 a court-certified Turkish translator. Mr. Zarrab speaks
16 English, but his English is not perfect, and therefore the
17 assistance of the interpreter was very important to make sure
18 that he understood my questions. And on the second occasion I
19 had the questions that were agreed upon by the defense counsel
20 and by the government to go over with Mr. Zarrab. We went over
21 those, and I have, he worked on -- there are two questions that
22 your Honor intends to ask for him to explain in his own
23 words --

24 THE COURT: Narrative.

25 MR. DeVITA: Yes, and I've helped him compose

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1 something to say with the assistance of the interpreter to be
2 sure that he has I think addressed what your Honor is going to
3 be asking. So he may be reading that, but it's in his words
4 that I put onto paper for him to present to your Honor and to
5 read. And he will have the assistance of the interpreter to
6 read what I have written to make sure it captures what we
7 discussed.

8 THE COURT: Sure.

9 MR. DeVITA: If that's all right with your Honor.

10 THE COURT: You may have said this and perhaps I
11 missed it. Did you go over the joint Curcio questions
12 developed by the government and Mr. Brafman?

13 MR. DeVITA: Yes, I did, your Honor. There are two
14 questions where your Honor asks or will ask Mr. Zarrab to state
15 in his own words what he understands the conflict to be, and
16 that's what I was referring to as having put on paper with
17 working with him and the interpreter and what I believe is an
18 appropriate response and what he believes is an appropriate
19 response to those specific questions.

20 But we spent a good deal of time talking about the
21 nature of the case, the nature of the potential conflicts that
22 your Honor has identified, and discussed those at some length.

23 THE COURT: Okay. Then, we're ready to swear in
24 Mr. Zarrab, if I could ask you to please stand.

25 MR. BRAFMAN: Your Honor, would the interpreter who

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1 worked with Mr. DeVita be permitted to sit here? Because she
2 has notes from that meeting.

3 MR. DeVITA: Ms. Kay was the interpreter who went with
4 me to MCC both occasions.

5 THE COURT: That's different than the interpreter who
6 is interpreting?

7 INTERPRETER ELTERMAN: Yes, your Honor. I was not in
8 the MCC.

9 THE COURT: I don't know if we can do that because --

10 MR. BRAFMAN: I can step out and she can sit in my
11 seat.

12 THE COURT: It's not that there is no room. It is we
13 have one interpreter for both defendants. And I don't know how
14 we can have one for one defendant and another --

15 MR. BRAFMAN: Ms. Kay's only participation will be
16 when your Honor is asking Mr. Zarrab to give narrative that
17 Mr. DeVita helped Mr. Zarrab with the assistance of Ms. Kay.
18 During the rest of the colloquy, the interpreter can continue
19 to interpret.

20 MR. DeVITA: If I can just explain, when your Honor
21 assigned me, I spoke to the court reporters, the courthouse --
22 I'm sorry, interpreters office to get the name of a Turkish
23 interpreter. It so happened that Mr. Rimm, who was the
24 assigned counsel in the prior occasion had also used Ms. Kay
25 and highly recommended her as did the --

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1 THE COURT: No, I understand that. The interpreter
2 department has a way of doing these things. This is the way
3 that they've asked us to do it. Is it the narrative statement
4 part that's key?

5 MR. DeVITA: Yes, your Honor. He wants to be
6 comfortable. I've written it in English. The interpreter can
7 make sure that he's -- and I did it on the basis of what we
8 discussed last night. And also the interpreter has notes of
9 what we said last night, and I think she can assist him and the
10 other interpreter can -- he can answer in Turkish, and the
11 other interpreter can interpret. He's there just --

12 MR. BRAFMAN: It is only the narrative, Judge.

13 THE COURT: It is the narrative. And does he want to
14 say the narrative in Turkish? He's welcome to do that, in
15 which case --

16 MR. BRAFMAN: That would be his preference.

17 THE COURT: Is he able to from whatever notes he has?

18 MR. BRAFMAN: She has the notes in Turkish.
19 Mr. DeVita's notes are in English. He speaks -- we've been
20 through this -- he speaks English to some degree, but this has
21 important language in it.

22 THE COURT: So would he be comfortable reading from
23 her notes? Are those his comments?

24 MR. DeVITA: I'm not sure her notes are in Turkish.

25 THE COURT: Why don't we go off the record and see

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1 what the situation is.

2 (Discussion off the record)

3 MR. BRAFMAN: Her handwriting is much clearer than
4 Mr. DeVita's I would note, and he can do that.

5 THE COURT: He would speak Turkish and then the
6 interpreter would in the normal course interpret. Is that all
7 right?

8 MR. BRAFMAN: He tells me he can read her notes and he
9 says he can read her notes in English.

10 THE COURT: And those notes are his thoughts and
11 his --

12 MR. BRAFMAN: Those notes are his notes dictated to
13 her.

14 MR. DeVITA: When we arrived today Ms. Kay was not
15 here, so I tried to reproduce what we went over last night.
16 And in my poor effort, it's a little less legible than
17 Ms. Kay's handwriting.

18 THE COURT: If it's okay with you, we'll just proceed.
19 If there is some hesitation in the narrative responses, we'll
20 ask the interpreter to help clarify.

21 MR. BRAFMAN: Yes, your Honor.

22 THE COURT: We can ask Mr. Zarrab to please stand and
23 I will swear him in.

24 (Defendant Zarrab sworn)

25 THE DEPUTY CLERK: Thank you, sir. You may be seated.

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1 THE COURT: Do you understand, Mr. Zarrab, as in the
2 past, that now that you're sworn and under oath, your answers
3 to my questions must be truthful and could subject you to the
4 criminal penalties of perjury if you answer untruthfully? You
5 realize that?

6 DEFENDANT ZARRAB: Yes, your Honor.

7 THE COURT: Okay. So could you tell us for the record
8 how old you are.

9 DEFENDANT ZARRAB: 33 years old.

10 THE COURT: And your education?

11 DEFENDANT ZARRAB: I'm high school graduate.

12 THE COURT: Your current physical health, how is your
13 physical health?

14 DEFENDANT ZARRAB: There's no problem right now.

15 THE COURT: And your mental health?

16 DEFENDANT ZARRAB: There is no problem.

17 THE COURT: So nothing that would stand in the way of
18 your understanding of today's proceedings?

19 DEFENDANT ZARRAB: I won't.

20 THE COURT: Okay. Have you taken any alcohol, drugs,
21 or medications within the past 24 hours?

22 DEFENDANT ZARRAB: I'm using a medication.

23 THE COURT: Is that medication prescribed by a doctor?

24 DEFENDANT ZARRAB: Yes, the doctor from the MCC.

25 THE COURT: Doctor?

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1 DEFENDANT ZARRAB: From MCC.

2 THE COURT: Okay. And does that interfere with your
3 ability to understand and participate in today's proceeding?

4 DEFENDANT ZARRAB: No, your Honor.

5 THE COURT: So, is anything interfering with your
6 ability to understand what's happening here today?

7 DEFENDANT ZARRAB: No.

8 THE COURT: Do you understand what the purpose is of
9 today's what we call Curcio proceedings?

10 DEFENDANT ZARRAB: Yes.

11 THE COURT: Here are questions for the defense, would
12 be both Mr. DeVita and Mr. Brafman. Does either of you have
13 any doubts or concerns as to Mr. Zarrab's competence to
14 participate in this Curcio proceeding?

15 MR. BRAFMAN: No, sir.

16 MR. DeVITA: No, your Honor.

17 THE COURT: How about the government?

18 MR. KAMARAJU: No, your Honor.

19 THE COURT: Neither do I. Based on the record today,
20 including Mr. Zarrab's testimony, I find that he is competent
21 to proceed with the Curcio hearing.

22 Here is a question for Mr. Brafman, it's going to come
23 up again later on. Mr. Brafman, I take it or have you
24 discussed all aspects of the case with Mr. Zarrab?

25 MR. BRAFMAN: Yes, sir.

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1 THE COURT: Including the various ways in which this
2 criminal prosecution might be resolved?

3 MR. BRAFMAN: Yes, sir, at great length.

4 THE COURT: So that could include a plea. As to pleas
5 it could be to what we call a Pimentel letter, to a plea
6 agreement, or to a cooperation agreement. You discussed those
7 possibilities?

8 MR. BRAFMAN: We've discussed all manners in which
9 this case could be resolved, including trial.

10 THE COURT: Trial is my next question. And other
11 possibilities as well, such as what Mr. Giuliani and
12 Mr. Mukasey, the path they're on.

13 MR. BRAFMAN: Yes, your Honor.

14 THE COURT: Mr. Zarrab, are you comfortable that you
15 have discussed all aspects of the case such as I've just
16 described with counsel?

17 DEFENDANT ZARRAB: Yes.

18 THE COURT: Are you aware that your interests may be
19 said to be adverse to the interests of co-defendants, victim
20 banks, the Republic of Turkey; you've gone over all of that
21 with Mr. Brafman, have you?

22 DEFENDANT ZARRAB: Yes.

23 THE COURT: So, let's talk, these are the questions
24 that are developed jointly by the defense and the government.
25 The first heading is called potential conflict of interest

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1 posed by Greenberg Traurig and Debevoise & Plimpton's
2 representation of banks.

3 And the first question there, Mr. Zarrab, for you is
4 are you satisfied with the services of your attorneys, thus far
5 in this case and -- yes? Did you say "yes"?

6 DEFENDANT ZARRAB: I am satisfied.

7 THE COURT: And particularly Greenberg Traurig and
8 Debevoise & Plimpton?

9 And also Mr. Brafman? And also Mr. DeVita and other
10 firms that we have --

11 THE COURT: Did you interpret his last answer?

12 INTERPRETER KAY: He was saying in Turkish as I was
13 interpreting your communication, your Honor. I didn't
14 interpret his communication. But he said "Yes, I'm satisfied
15 with all of them."

16 THE COURT: Okay. And do you understand, Mr. Zarrab,
17 that your lawyers are employed, and now I'm particularly
18 talking about Mr. Giuliani and Mr. Mukasey, by different law
19 firms, including Debevoise and Greenberg Traurig, and that they
20 have different obligations to the other clients of those law
21 firms? Do you realize that?

22 DEFENDANT ZARRAB: Yes, your Honor.

23 THE COURT: Have any of your attorneys from the law
24 firm of Greenberg Traurig, including Mr. Giuliani, informed you
25 that their law firm currently represents several banks that the

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1 government alleges are victims of the various conspiracies
2 charged in the indictment against you?

3 MR. BRAFMAN: Your Honor, may I just clarify something
4 so that it doesn't come up in every question?

5 THE COURT: Okay.

6 MR. BRAFMAN: Mr. Zarrab's verbal communications with
7 Mr. Giuliani have been either through me or through
8 Mr. Mukasey, or through Mr. Giuliani's partner, Mr. Levy, whose
9 affidavit is attached.

10 THE COURT: Okay. So, you're saying no direct
11 conversations between Mr. Zarrab and Mr. Giuliani?

12 MR. BRAFMAN: I do not believe there were any direct
13 conversations.

14 THE COURT: Okay. Is that correct, Mr. Zarrab?

15 DEFENDANT ZARRAB: Yes, your Honor, it's true.

16 THE COURT: So, next question is have any of your
17 attorneys from the law firm of Greenberg Traurig informed you
18 that even though they personally may not participate in
19 representation of those banks, that they nevertheless have
20 ethical obligations to those banks, because those banks are
21 clients of the law firm that your attorneys work for?

22 DEFENDANT ZARRAB: They did inform me, your Honor.

23 THE COURT: And how long have you been aware of this
24 issue?

25 DEFENDANT ZARRAB: From the first day we start working

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1 together.

2 THE COURT: Do you feel that you've had sufficient
3 discussion of this issue with those attorneys?

4 DEFENDANT ZARRAB: Yes, your Honor.

5 THE COURT: Do you understand that the fact that your
6 attorneys from Greenberg Traurig represent you and
7 simultaneously represent banks alleged to be victims in this
8 case may lead them to have loyalties divided between yourself
9 and those banks?

10 DEFENDANT ZARRAB: Yes, your Honor, I understand.

11 THE COURT: Do you understand that in some cases, in
12 some instances, your attorneys from Greenberg Traurig might
13 have an incentive to put the interests of those banks ahead of
14 yours? Do you realize that?

15 DEFENDANT ZARRAB: I understand, your Honor.

16 THE COURT: Do you understand that none of the bank
17 clients of Greenberg Traurig that the government alleges are
18 victims of the crimes charged in the indictment against you
19 have been waived, none of those banks have waived the conflict
20 of interest presented by Greenberg Traurig's representation of
21 you and them simultaneously?

22 DEFENDANT ZARRAB: Yes, your Honor, I'm aware of it.

23 THE COURT: Turning to the Debevoise & Plimpton firm,
24 have any of your attorneys from the law firm of Debevoise &
25 Plimpton, including Mr. Mukasey -- and I take it, Mr. Brafman,

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1 that you said Mr. Mukasey has directly counseled Mr. Zarrab?

2 MR. BRAFMAN: Yes, on several occasions.

3 THE COURT: Okay. So including Mr. Mukasey, informed
4 you that their law firm also currently represents several banks
5 that the government alleges are victims of the conspiracies
6 charged in the indictment against you in this case? You
7 realize that?

8 DEFENDANT ZARRAB: They did advise me, your Honor.

9 THE COURT: Have any of your attorneys from the law
10 firm of Debevoise & Plimpton, including Mr. Mukasey, informed
11 you that even though they personally may not participate in the
12 representation of those banks, that they nevertheless have
13 ethical obligations to those banks because they are clients of
14 the law firm that your lawyers also worked for?

15 DEFENDANT ZARRAB: Yes, your Honor, they did inform me
16 about it.

17 THE COURT: How long have you been aware of this issue
18 with respect to Debevoise & Plimpton?

19 DEFENDANT ZARRAB: From the first day on.

20 THE COURT: And do you feel you've spent adequate time
21 discussing those issues with your attorneys?

22 DEFENDANT ZARRAB: Yes, your Honor. I think I was
23 informed by my own attorneys and by Mr. DeVita from CJA office
24 and all the other lawyers that they're representing me. We
25 discussed this issue in very big perspective, and I'm informed

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1 about all of it.

2 THE COURT: Do you understand, Mr. Zarrab, that the
3 fact that your lawyers from Debevoise & Plimpton represent you
4 and simultaneously represent banks alleged to be victims in
5 this case, may lead them, the lawyers that is, to have
6 loyalties divided between yourself and those banks?

7 DEFENDANT ZARRAB: Yes, I understand.

8 THE COURT: Do you understand that in some instances,
9 your attorneys from Debevoise & Plimpton might have an
10 incentive to put the interests of those banks before your own?

11 DEFENDANT ZARRAB: Yes, I understand, your Honor.

12 THE COURT: Do you also understand that none of the
13 bank clients of Debevoise & Plimpton that the government
14 alleges are victims of the crimes charged in the indictment
15 against you have waived the conflict of interests presented by
16 Debevoise & Plimpton's representation of you and them
17 simultaneously? You realize there have been no waivers by
18 those banks?

19 DEFENDANT ZARRAB: Yes, I understand.

20 THE COURT: So, now let me give you some examples of
21 those issues and ask you about them. These are examples of the
22 ways in which the allegiance or the loyalty of your lawyers
23 from Greenberg Traurig and Debevoise & Plimpton could adversely
24 affect their representation of you in this case. This
25 representation could affect the way your lawyers consider and

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1 advise you in the following areas. One is whether and when you
2 should plead guilty; another -- do you understand that?

3 DEFENDANT ZARRAB: Yes.

4 THE COURT: Another is whether you should seek to
5 cooperate with the U.S. government. Another area is what
6 defenses you should raise in court on your behalf to respond to
7 the indictment. Another is whether you should testify yourself
8 at trial, at any trial in this case. Another area is which
9 witnesses at trial should be cross-examined and what questions
10 they should be asked. Another area is which witnesses should
11 be called at trial and what other evidence to offer on your
12 behalf. Another is what arguments should be made on your
13 behalf to the jury. And another, yet another is what arguments
14 should be made to the Court, and what facts should be brought
15 to the Court's attention before trial, during trial, or, in the
16 event that you were convicted following a trial, at your
17 sentencing.

18 Do you understand each of those categories, and in
19 response to the question that I posed whether you understand
20 the nature of these conflicts and how they could impact you in
21 this case?

22 DEFENDANT ZARRAB: I understand all of them, your
23 Honor.

24 THE COURT: Okay. So now, I'm going to go into even
25 more detail about some of those examples. This is important in

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1 a Curcio proceeding such as this one.

2 So, the first question is do you understand that your
3 attorneys from Greenberg Traurig and Debevoise & Plimpton may
4 advise you not to take positions in this case either before
5 trial, during trial, or at sentencing, that are critical of the
6 banks that are clients of their law firms, even if criticizing
7 them might be helpful to your defense?

8 Do you realize that? Do you understand that?

9 DEFENDANT ZARRAB: Yes, I understand.

10 THE COURT: Second, in this area, do you understand
11 that your attorneys from Greenberg Traurig and Debevoise &
12 Plimpton may advise you and your other lawyers not to
13 vigorously cross-examine witnesses who are employees of those
14 banks, should they testify at your trial, if your lawyers from
15 Greenberg Traurig and Debevoise & Plimpton believe that such
16 cross-examination may be harmful to their client banks'
17 interests?

18 DEFENDANT ZARRAB: Yes, I understand.

19 THE COURT: Next question is are you aware that your
20 attorneys from Greenberg Traurig and Debevoise & Plimpton may
21 have access to, or may have learned information from, the banks
22 they represent that may be helpful in defending you, but that
23 they are, those attorneys are, absolutely prohibited from using
24 that information to defend you, because of the attorney-client
25 privilege that applies to the communication between your

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1 attorneys from Greenberg Traurig and Debevoise & Plimpton, and
2 their bank clients?

3 Do you realize that?

4 DEFENDANT ZARRAB: Yes, I'm aware of it.

5 THE COURT: Next, do you understand that your
6 attorneys from Greenberg Traurig and Debevoise & Plimpton
7 cannot negotiate on your behalf in a manner that would be
8 adverse to the interests of their bank firm clients, including
9 by using any confidential information they may have learned
10 from those banks?

11 DEFENDANT ZARRAB: Yes, I understand.

12 THE COURT: And do you understand -- this is the
13 question we talked briefly about before -- do you understand
14 that your attorneys from Greenberg Traurig and Debevoise &
15 Plimpton may be limited in making arguments to the government
16 about your level of involvement in the offense or crimes
17 charged in the indictment or about your role in those offenses
18 or crimes, and about your culpability?

19 Do you understand that?

20 DEFENDANT ZARRAB: Yes, I understand.

21 THE COURT: Next, do you understand that your
22 attorneys from Greenberg Traurig and Debevoise & Plimpton
23 cannot counsel or advise you to accept a disposition of the
24 case that harms or is adverse to the interests of their firms'
25 bank clients? Do you realize that?

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1 DEFENDANT ZARRAB: Yes, I understand that.

2 THE COURT: Do you then understand each of these
3 examples that I have just presented to you?

4 DEFENDANT ZARRAB: Yes, I understand all of them.

5 THE COURT: Okay. I'm going to take a five-minute
6 break. Five-minute recess and we'll pick up in five minutes.
7 Thank you.

8 (Recess)

9 THE COURT: Just as a heads up, it's likely we won't
10 finish everything today. So I'm going to leave one section for
11 the next time, which is the section that starts on page six of
12 this joint submission the right to conflict-free
13 representation. You all will make whatever additional
14 submissions in writing, and I just want to be thorough, and
15 then it shouldn't take us very long after that, but I don't
16 want to do finalize things today.

17 We're still waiting for the interpreter.

18 (Pause)

19 THE COURT: Are you all ready?

20 THE INTERPRETER: Yes.

21 THE COURT: So my next question to Mr. Zarrab is,
22 Mr. Zarrab, do you understand that Mr. Giuliani and Mr. Mukasey
23 intend to limit their representation of you and do not intend
24 to appear before this court as part of these proceedings? Do
25 you realize that?

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1 DEFENDANT ZARRAB: Yes.

2 THE COURT: This is one of those questions that
3 Mr. Zarrab is going to respond in narrative form. He will, as
4 I understand it, speak in Turkish, and you will interpret in
5 English?

6 INTERPRETER ELTERMAN: Into English, your Honor.

7 (Defendant conferring with his counsel)

8 MR. BRAFMAN: Can he read it in Turkish and you'll
9 explain it in English?

10 THE COURT: That's what we were planning to do. So
11 here's the question for you first. The question is or the
12 request is that you tell me in your own words what your
13 understanding is of the potential conflicts of interest arising
14 in this case as a result of Greenberg Traurig and Debevoise &
15 Plimpton representing you in this case.

16 MR. BRAFMAN: Can we have two minutes just to review
17 his notes, your Honor?

18 THE COURT: Sure.

19 (Pause)

20 MR. BRAFMAN: He's ready to proceed, your Honor.

21 THE COURT: You can have as much time as you need.
22 You're ready? Okay.

23 The question is for you to tell me in your own words
24 what your understanding is of the potential conflicts of
25 interest arising in this case as a result of Greenberg Traurig

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1 and Debevoise & Plimpton's representing you in this case.

2 INTERPRETER ELTERMAN: That was a partial sentence,
3 your Honor. It is only a partial sentence, your Honor, and we
4 have to know the verb. What is it? It's just a phrase. A
5 phrase by itself.

6 DEFENDANT ZARRAB: I understood that based on --

7 THE COURT: Hold on one second. I'm going to go off
8 the record for a minute.

9 (Discussion off the record)

10 INTERPRETER ELTERMAN: The interpreter will relay the
11 sum and substance.

12 THE COURT: I was asking if the other interpreter
13 would be more comfortable with this part of the proceeding.
14 But I think --

15 MR. BRAFMAN: I think the answer is yes, because she
16 took painstaking notes during her meeting with Mr. DeVita of
17 what the defendant was telling her in Turkish. And he's now
18 paraphrasing it for the benefit of time, whereas I think she
19 could read it from her own notes and could confirm it very
20 clearly.

21 THE COURT: It may be that her notes are in English
22 and not in Turkish.

23 MR. BRAFMAN: They are in English but she --

24 INTERPRETER KAY: They're not my notes, attorney
25 Brafman. Your Honor, they are actually attorney DeVita's notes

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1 that he discussed with Mr. Zarrab. And my job was to interpret
2 for Mr. DeVita. So I'm off the subject, but I would not
3 interpret anything that Mr. Zarrab did not say nor Mr. DeVita
4 say. So he's holding my notes, but there are no Turkish
5 writings in my notes. They are only the notes of Mr. DeVita,
6 just to clarify.

7 THE COURT: What I think is the upshot is we should
8 take whatever time it requires but continue as we have been, if
9 that's okay with you.

10 MR. BRAFMAN: Judge, whatever way makes sense, I just
11 don't know.

12 THE COURT: I think that would be the best. So, did
13 you get his response?

14 INTERPRETER ELTERMAN: Yes. This interpreter has
15 listened very carefully and it is not going to be a word by
16 word. But a meaning, the gist, and the substance, in sum and
17 substance.

18 THE COURT: If it doesn't sound correct, Mr. DeVita --

19 MR. DeVITA: Can we have a microphone for the
20 interpreter because it is a little hard over here to hear her.

21 INTERPRETER ELTERMAN: Okay. Do you want the
22 interpreter to project it without the microphone?

23 THE COURT: No, I think we need to use the microphone.

24 MR. DeVITA: It may help the court reporter also, your
25 Honor.

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1 INTERPRETER ELTERMAN: "Theoretically, as stated by
2 the government, by the state," which means, it means the
3 prosecution, anyway, "it is my understanding that when there is
4 a potential conflict of interest, when the same law firm
5 represents the banks, who may have been harmed or injured by
6 alleged, you know, accused activities of the defendant, it is
7 not advisable, according to the state, theoretically, because
8 of the potential of conflict of interest. But, based on the
9 lengthy and, you know, deep experience of the law firms that
10 are representing me in this case, I have faith that they will
11 overcome this, and I have faith that, you know, that I don't
12 think there will be the conflict of interest issue."

13 THE COURT: He was particularly referring to the law
14 firms of Greenberg Traurig and Debevoise & Plimpton in giving
15 his response?

16 DEFENDANT ZARRAB: Yes.

17 THE COURT: Mr. DeVita, is that --

18 MR. DeVITA: Yes, your Honor, and I think he also
19 acknowledged that he understands if there were a conflict,
20 actions taken in court might help him, could potentially hurt
21 the banks, and vice versa. He understands that point.

22 THE COURT: You need to interpret that both ways.

23 DEFENDANT ZARRAB: Yes, yes, I did.

24 THE COURT: And since we are going to have an adjourn
25 date, if you feel that there is something that needs to be

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1 amplified, Mr. DeVita, we would be happy to hear that.

2 The next question, Mr. Zarrab, is do you understand
3 that the greatest danger to you may be the inability to foresee
4 all possible conflicts that may arise because of Greenberg
5 Traurig and Debevoise & Plimpton's simultaneous representation
6 of some of the banks?

7 DEFENDANT ZARRAB: Yes, I understand.

8 THE COURT: Okay. Then so let's move to the topic
9 described in the joint submission of questions called potential
10 conflict of interest posed by Greenberg Traurig's
11 representation of the Republic of Turkey.

12 First question, Mr. Zarrab, is have any of your
13 attorneys from the law firm of Greenberg Traurig informed you
14 that their law firm has registered with the United States
15 government as an agent of the government of the Republic of
16 Turkey?

17 DEFENDANT ZARRAB: Yes.

18 THE COURT: Have any of your attorneys from the law
19 firm of Greenberg Traurig informed you that even though they
20 personally may not participate in the representations of the
21 government of the Republic of Turkey, that they nevertheless
22 have ethical obligations to the government of the Republic of
23 Turkey, because it is a client of the law firm that your
24 lawyers also worked for?

25 DEFENDANT ZARRAB: Yes.

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1 THE COURT: How long have you been aware of this
2 issue?

3 DEFENDANT ZARRAB: From the very first day.

4 THE COURT: Are you comfortable that you've discussed
5 it fully with lawyers from Greenberg Traurig and your other
6 counsel so that you understand the implications of this
7 relationship?

8 DEFENDANT ZARRAB: Yes, I have.

9 THE COURT: Do you understand that the fact that your
10 lawyers from Greenberg Traurig represent you and simultaneously
11 represent the government of the Republic of Turkey may lead
12 them to have loyalties divided between yourself and the
13 government of the Republic of Turkey?

14 DEFENDANT ZARRAB: Yes.

15 THE COURT: Do you understand that in some cases, your
16 lawyers from Greenberg Traurig might have an incentive to put
17 the interests of the government of the Republic of Turkey
18 before yours?

19 DEFENDANT ZARRAB: Yes.

20 THE COURT: So let me give you some examples of this
21 situation I've been describing in which the allegiance to the
22 government of the Republic of Turkey of your lawyers from
23 Greenberg Traurig could adversely affect their representation
24 of you in this case. This representation could affect the way
25 that your lawyers consider and advise you of the following:

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1 One is whether and when you should plead guilty.

2 Do you understand that?

3 DEFENDANT ZARRAB: Yes.

4 THE COURT: Another is whether you should seek to
5 cooperate with the government.

6 DEFENDANT ZARRAB: Yes.

7 THE COURT: Was there a "yes" to the first answer?

8 DEFENDANT ZARRAB: Yes, your Honor.

9 THE COURT: And the third is it could affect the
10 advice they give to you as to what defenses you should raise in
11 this case.

12 DEFENDANT ZARRAB: Yes.

13 THE COURT: It could also affect whether you should
14 testify at trial.

15 DEFENDANT ZARRAB: Yes.

16 THE COURT: It also could affect which witnesses
17 should be cross-examined and what questions they should be
18 asked.

19 DEFENDANT ZARRAB: Yes.

20 THE COURT: It might affect which witnesses should be
21 called and what other evidence to offer on your behalf.

22 DEFENDANT ZARRAB: Yes.

23 THE COURT: It also might affect what arguments to
24 make on your behalf to the jury.

25 DEFENDANT ZARRAB: Yes.

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1 THE COURT: And it also might affect what arguments to
2 make to the Court, and what facts to bring to the Court's
3 attention before trial, during trial, and if you were to be
4 convicted, at your sentencing.

5 DEFENDANT ZARRAB: Yes.

6 THE COURT: So, now I'm going to expand on these
7 examples, and when I finish this section, we're going to take a
8 recess until a date that's convenient to all of you.

9 Let me expand on these examples. First, one example,
10 do you understand that your interests in a public trial of the
11 charges in this case may be different from the interests of the
12 government of Turkey?

13 DEFENDANT ZARRAB: Yes.

14 THE COURT: And you also understand that your
15 attorneys from Greenberg Traurig cannot advise you to proceed
16 to trial in a manner that would be adverse to the interests of
17 the government of Turkey? Do you realize that?

18 DEFENDANT ZARRAB: Yes.

19 THE COURT: And do you understand that as part of its
20 work as an agent of the government of Turkey, the law firm
21 Greenberg Traurig is obligated to propose and pursue passage of
22 legislation and other U.S. government action that promotes
23 Turkey's interests and provides a positive image of the Turks,
24 of Turkey, and of the United States-Turkey relationship?

25 DEFENDANT ZARRAB: Yes.

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1 THE COURT: Do you understand that to the extent your
2 right to a public trial conflicts with Greenberg Traurig's
3 duties to promote a positive image of the Republic of Turkey --

4 DEFENDANT ZARRAB: Yes.

5 THE COURT: -- your attorneys from Greenberg Traurig
6 cannot advise you to proceed to a public trial? Do you realize
7 that?

8 DEFENDANT ZARRAB: Yes.

9 THE COURT: Do you understand that your attorneys from
10 Greenberg Traurig may advise you not to take positions in this
11 case before trial, during trial, or at sentencing that are
12 critical of the government of Turkey, even if criticizing it
13 might help your defense?

14 Do you realize that?

15 DEFENDANT ZARRAB: Yes, I understand.

16 THE COURT: Do you understand that your attorneys from
17 Greenberg Traurig may advise you not to seek to admit evidence
18 that they view as adverse to the interests of the government of
19 Turkey, even if admitting that evidence might help your
20 defense?

21 DEFENDANT ZARRAB: Yes.

22 THE COURT: Do you understand that your attorneys from
23 Greenberg Traurig, including Mr. Giuliani, cannot negotiate on
24 your behalf in a manner that would be adverse to the interests
25 of the government of Turkey?

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1 DEFENDANT ZARRAB: Yes.

2 THE COURT: Including by using any confidential
3 information that they may have learned pursuant to their agency
4 relationship with the government of Turkey?

5 DEFENDANT ZARRAB: Yes.

6 THE COURT: Do you understand that your attorneys from
7 Greenberg Traurig cannot counsel or advise you to accept a
8 disposition of this case that harms or is adverse to the
9 interests of the government of Turkey?

10 DEFENDANT ZARRAB: Yes.

11 THE COURT: Do you understand each of those examples
12 that I've just given you, five or six, whatever they were?

13 DEFENDANT ZARRAB: Yes, I do.

14 THE COURT: So we're at the point now where I'm going
15 to ask you to tell me in your own words again what your
16 understanding is of the potential conflicts of interest arising
17 in this situation.

18 MR. BRAFMAN: Your Honor, if I may, since we are not
19 going to complete the Curcio hearing today, would you accept my
20 suggestion respectfully that this would be a good place to stop
21 so that we can work through the next question. These are very
22 complicated examples that the Court has given him.

23 THE COURT: I have no problem with that. We're about
24 to stop anyway.

25 MR. BRAFMAN: I prefer to stop before the next

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1 narrative.

2 MR. DeVITA: I think, your Honor, it will help us
3 combat the language problems we've been having.

4 THE COURT: No problem. So on your letter submission
5 we have not asked eight and nine in this section, and we'll
6 pick up with that.

7 So now the next question is, when you are available.
8 I'm going to suggest a date and a time if it's possible.

9 MR. BRAFMAN: Your Honor, can I make a suggestion,
10 sir?

11 THE COURT: You can.

12 MR. BRAFMAN: Okay. We have tentatively scheduled a
13 suppression hearing for May 18 at 11 a.m., following the Atilla
14 Curcio hearing. I am discussing with my client whether or not
15 we should proceed with the hearing, and will know fairly soon
16 because there are some issues concerning what evidence we would
17 ultimately even be able to suppress, even if we were to sustain
18 our burden.

19 I will notify the government and the Court, of course,
20 within a couple of days if we withdraw our request for a
21 hearing. And I obviously want to confer with my client about
22 making a decision like that.

23 If we were to withdraw the hearing, I've set aside the
24 18th, and we could do it on the same day as Mr. Atilla's
25 hearing.

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1 MR. DeVITA: I'm out of town that week, your Honor.

2 MR. BRAFMAN: Withdrawn.

3 MR. DeVITA: Any time the following week is fine with
4 me, your Honor.

5 THE COURT: How about even sooner is not good? I was
6 going to suggest May 8 at 2 p.m. Is that a possibility?

7 MR. BRAFMAN: I can do that, Judge.

8 MR. DeVITA: I have to be in judicial training in the
9 Judicial Institute in White Plains, your Honor.

10 THE COURT: What could you possibly --

11 MR. DeVITA: I am a part-time magistrate in the New
12 York State system, and it is mandatory training twice a year.
13 So the 10th or the 11th would be fine, your Honor.

14 THE COURT: So are you saying that May 11 at 2, are
15 you all available?

16 MR. DeVITA: That's fine, your Honor.

17 MR. BRAFMAN: I can do that, your Honor.

18 MR. KAMARAJU: That's fine for the government.

19 THE COURT: Okay.

20 MR. ROCCO: Your Honor, on Mr. Atilla's behalf, may I
21 ask he be excused at that hearing? He was brought over here
22 today at 6 a.m. It is a very, very long day, he's at Brooklyn,
23 he's at MDC. It is a very long, tiring day and I don't think
24 he has any place in these proceedings. Our Curcio hearing is
25 on the 18th.

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1 THE COURT: Sure.

2 MR. ROCCO: Thank you.

3 THE COURT: Thanks.

4 MR. ROCCO: One further thing. You appointed William
5 Harrington Curcio counsel for Mr. Atilla, and I understand
6 there may have been a problem. Has --

7 THE COURT: Yes. Mr. Harrington would need to have
8 his own Curcio hearing --

9 MR. ROCCO: We discussed that, Judge.

10 THE COURT: -- in order to be independent counsel, so
11 we thought we would skip. We'll follow up with in just a
12 minute. We were pursuing whoever the next CJA person was, but
13 I don't know that we've got a confirmation back yet.

14 MR. ROCCO: Thank you, Judge.

15 THE COURT: We're on the case. Yes. Good to see you
16 all.

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